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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 383

LESTER H. BARNHART, CLINTON R. SMITH, GEORGE W. YONTZ, CHARLES S. LAKE, JAMES F. FUNK, WILLIAM J. GARVER, AND BURL R. PHARES, CONSTITUTING A COMMITTEE REPRESENTING AND ACTING FOR FEDERATED SHOP CRAFT EMPLOYES, MAINTENANCE OF WAY EMPLOYES, AND SIGNALMAN EMPLOYES, OF THE WESTERN MARYLAND RAILWAY COMPANY AND AUTHORIZED AND DIRECTED BY SAID EMPLOYES OF SAID RAILWAY COMPANY TO INSTITUTE THIS SUIT, *Petitioners*,

against

WESTERN MARYLAND RAILWAY COMPANY,
A BODY CORPORATE.

PETITION OF ABOVE-NAMED PETITIONERS FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

ISAAC LOBE STRAUS,
Munsey Building,
Baltimore, Maryland,
Counsel for Petitioners.

The Daily Record Co. Print, Baltimore.

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against

WESTERN MARYLAND RAILWAY COMPANY,
A BODY CORPORATE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioners, Lester H. Barnhart and the others above named, constituting a Committee representing and acting for Federated Shop Craft Employes, Maintenance of Way

Employes and Signalman Employes, of the Western Maryland Railway Company and authorized and directed by said Employes of said Railway Company to institute this suit, respectfully pray that a Writ of Certiorari issue to review the decision and judgment of the United States Circuit Court of Appeals for the Fourth Circuit rendered and entered in the above-named cause on June 11, 1942, (R. 59), affirming the judgment and decree of the United States District Court for the District of Maryland, at Baltimore, entered in said cause by said District Court on November 28, 1941, that the Defendant's Motion to Dismiss the Plaintiffs' Bill of Complaint in said cause be granted and dismissing said Bill of Complaint with costs to be paid by the Plaintiffs.

A.

STATEMENT OF THE MATTER INVOLVED.

The case consists of the matters and facts alleged in the Bill of Complaint and the Exhibit filed as part of it. The Complaint and Exhibit show the following:

Interstate Railroads, including Defendant, were returned to private management by the Act of Congress, designated the "Transportation Act", by which the Railroad Labor Board, created by the Act, was directed to render decisions establishing rates of pay for shop craft and other classes of employes of the Interstate Carriers as just and reasonable, extending the National Agreement Rules until July 1, 1921, and ordering the Carriers and Employes to hold conferences as directed and required by the provisions of the Act and agree on as many rules as possible and submit such as were not agreed on to the Labor Board for decision; which the representatives of the defendant Railway Company and the Committee representing the Employes of the Company did accordingly. After rendering decisions respecting wage rates and pay of the Employes, the

Labor Board, on November 29, 1921, rendered its Addendum No. 6 to Decision No. 222, whereby the Board promulgated a complete set of rules to take the place of the rules of the National Agreement, and ordered them to be applied in the place of the rules disagreed upon and combined with the agreed rules so as to *form and constitute a working agreement as just and reasonable.* The Bill then specifically alleges that "THE DEFENDANT, THE WESTERN MARYLAND RAILWAY COMPANY, ACCEPTED THIS AGREEMENT, PRINTED IT AND PUT IT INTO EFFECT". (R. 4).

The Bill (R. 4) then alleges that pursuant to the provisions of the Labor Board's Decision 119, the defendant Railway Company and its Employes aforesaid ENTERED INTO CONTRACTS AND AGREEMENTS BETWEEN THE MANAGEMENT OF THE RAILWAY COMPANY AND ITS SAID EMPLOYES, INCLUDING THE PLAINTIFFS AND ALL THOSE FOR AND UPON WHOSE BEHALF THE BILL IS FILED, WHICH SAID CONTRACTS AND AGREEMENTS WERE KNOWN AND DESCRIBED AS "NEGOTIATIONS OF RULES AND WORKING CONDITIONS UNDER DECISION 119 OF THE UNITED STATES RAILWAY LABOR BOARD".

The Bill then (R. 4-5) recites, as *provisions of said Agreements, last above mentioned, Rule 37 thereof* as follows: "* * * *No employee shall be dismissed without a fair hearing as provided for in rule. The employe shall be apprised of the precise charge against him a reasonable time in advance of the hearing. Such employe shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by counsel of his own choosing. If the judgment shall be in his favor, he shall be compensated for the wage loss, if any, suffered by him*"; and also Rule

183 thereof, as follows: *"These general and special rules and regulations shall remain in full force and effect until superseded or amended as herein provided: Should either the Railway Company or the Shop Crafts' Organization desire to revise these rules, a written statement containing proposed changes shall be given, and conference held within 30 days to arrange details necessary to negotiate to a conclusion."*

That (R. 5-6) *the defendant Company, in violation of said Contracts and Agreements last mentioned, on March 16, 1922, as later particularly stated, summarily, arbitrarily and illegally discharged and dismissed said Employes, without having complied with, or given any consideration or regard whatever to the terms, conditions and requirements of said Contracts and Agreements of employment, and more particularly said Rules 37 and 183 above recited, notwithstanding that said Employes were then, have always been, and are, ready and willing to perform the duties of their employments for the Defendant in full accordance with said Contracts and Agreements, and have heretofore tendered themselves as so ready and willing, and fully performed all the terms, conditions and agreements prescribed, provided for and agreed upon in said Contracts and Agreements between Defendant and Employes, and notwithstanding that said Plaintiffs and Employes, after said breach and violation by Defendant of said Contracts and Agreements, continuously offered said Defendant fully to perform and fulfil said Contracts and Agreements on their part, whilst the Defendant has continuously, wrongfully and unlawfully refused to permit Plaintiffs and said other Employes to perform their duties under said Contracts and Agreements and has prevented them from performing the same; that not any of the Plaintiffs or any of said Employes has or*

have ever been discharged or dismissed from the service or employment of Defendant in the manner agreed upon and stipulated expressly in said Contracts and Agreements of employment, and that Plaintiffs and said other Employes are still, and have continuously been, in the Defendant's employ, as its rightful and lawful Employes, and entitled to a fair and equitable accounting from the Defendant of and for the wages, benefits, emoluments and dues accruing to them, under their contractual relations with the Defendant, from, all and several, their rights, claims and privileges as Employes of the Defendant, and secured to them by, and incidental and appurtenant to, their said relation to the Defendant as its Employes as aforesaid.

The Bill then (R. 7-8) states the manner and particulars whereby the Defendant discharged said Employes, namely, *in violation of the Transportation Act of 1920, and the wage and rule decisions of the Labor Board*, the Company attempted to remove from the jurisdiction of the Board said Employes, who *"under Contracts with said Company"*, were performing work and service for it, by letting out to four several alleged "contractors" the operation of its railway shops.

The Bill (R. 8-9) then states that "said Employes made efforts to secure conference with the chief Executive of the Railway Company, but without success", and that after certain notices and correspondence, the whole dispute was duly brought and submitted to the Railroad Labor Board for decision.

The Bill (R. 9) then sets forth the Opinion and Decision No. 1361, of the Labor Board, rendered November 13, 1922, in disposing of the case submitted to it. (*It is respectfully submitted, at this point of the narrative of the allegations and contents of the Bill, that it must be perfectly manifest*

that the Decision and Opinion of the Labor Board, recited in the Bill, and filed as an Exhibit as part of the Bill, are not referred to or brought to the attention of the Court for the purpose, directly or indirectly, of asking the Court to enforce by process, or otherwise howsoever, said Decision of the Labor Board, but, on the contrary, in harmony and accord with the Decisions of the Supreme Court of the United States in the two Pennsylvania Railroad cases in 261 U. S. 72 and 267 U. S. 203, to show the facts and circumstances of the case herein, including the conduct and contentions of the respective parties, with reference to the Transportation Act of Congress of 1920, and the Contracts and Agreements actually entered into pursuant to said Act, *as well as with respect to the construction, operation and effect of said Transportation Act, as contended by the parties at the time, under and by virtue of which Act, and in compliance with, and pursuance of, its valid provisions, the said Contracts and Agreements were entered into by the parties.)*

The Bill (R. 9-10) states that, in its Opinion and Decision No. 1361, the Labor Board pointed out that the Employes submitted evidence that they had made an effort to secure conferences with representatives of the carrier, but that the carrier took the position that the men were no longer its employes, but were employes of the "contractors". The Board held that, under the Act the men were Employes of the carrier and subject to the Board's jurisdiction. The Board said:

> "The carrier contends it can close down its shops, put its employes under a contractor, arbitrarily reduce their legally established wages, and deprive them of the railway shop rules, *embraced in an Agreement of the parties and in the Decisions of the Board, although said wages and rules had previously been put into effect by the carrier, and the thirty-day notice pro-*

vided by the Agreement and the Transportation Act for negotiating changes in wages and working conditions had not been complied with."

The Board then continued:

"These contracts are merely *subterfuges* by which the carrier *arbitrarily* changed the wages and working conditions of these employes *without compliance with the provisions of the law* * * *. It must be remembered that these Decisions *had been accepted and put into effect by the carrier, and had thus, in effect, become Agreements between the parties, which could not be terminated except in accordance with the express provisions of the agreements themselves AS WELL AS THE TRANSPORTATION ACT, 1920.* * * *

The Railroad Labor Board, therefore, decided: (a) that the contracts between the Railway Company and the four alleged contractors were IN VIOLATION OF THE TRANSPORTATION ACT, 1920, and (b) that said employes were under the jurisdiction of the Board AND SUBJECT TO THE TRANSPORTATION ACT, 1920, *and the Decisions of the Board.*

The Bill (R. 11) states that the defendant Company refused to accept the Labor Board's Decision and continued to maintain and carry out its Contracts with said four Contractors, *and to hold and treat said employes as no longer employes of it, said Railway Company.*

Representatives of said employes continued from time to time to make efforts, but without avail, to obtain conferences with said Western Maryland Railway Company. Said Railway Company continued its attitude and conduct of refusing to recognize said Employes aforesaid as its Employes, and of refusing to recognize, carry out or give effect to any of the rights of said Employes under said Con-

tracts and Decisions, AND SAID ACT, with respect particularly to wages, working rules, *etc.* (R. 12).

Thereafter and during said year 1934, the Employes made further and written applications for conference with the executive officers and representatives of said Railway Company to adjust or dispose of said dispute, but all of such applications were refused and denied (R. 13).

On February 1, 1934, the Co-ordinator of Railroads of the United States ordered the said "contracts" of the Railway Company with said alleged "contractors" abolished as wrongful and illegal, and, accordingly, the same were abrogated and terminated.

On November 18, 1934, representatives of the Employes submitted the case with its controversies to the Railway Adjustment Board at Chicago, which replied it had no jurisdiction thereover; and in 1935 L. H. Barnhart, on behalf of said Employes, sought assistance and relief from the National Mediation Board at Washington, D. C., with reference to the case and controversy, which Board also disclaimed jurisdiction to afford remedial relief; and on September 26, 1940, W. J. Garver, another of the abovenamed Plaintiffs, wrote to the National Labor Relations Board at Washington, D. C., which Board forwarded said letter to the National Mediation Board, with respect to the status of the case and relief therein, to which the National Mediation Board, on October 9, 1940, replied it had no jurisdiction to deal with the matter. The Bill states that the Plaintiffs have exhausted every possible effort available to them to obtain relief and redress, for their injuries and wrongs resulting from the conduct and action of the Western Maryland Railway Company set forth in the premises, in all the tribunals of the United States Government other than their last and final right of resort for relief and redress in the Courts of the United States. (R. 13-14).

The Bill (R. 14) states, that the amount in controversy in this suit exceeds the sum or value of three thousand dollars ($3,000), exclusive of interests and costs, and the claims of some of the individuals for whom this suit is filed, and in controversy herein, exceed $3,000 exclusive of interests and costs.

The Bill (R. 15-16) then prays:

1. That the Court, by its Decree, adjudge that the Defendant Company, by its said conduct and actions, has unlawfully, wrongfully and unjustly violated its legal, equitable and moral obligations and duties to the Plaintiffs and other employes in whose behalf the suit is instituted.

2. That the Defendant Company may be *enjoined and restrained from continuing* its said conduct and actions against the Plaintiffs and said Employes.

3. That the Court may decree and direct an accounting to be made by said Railway Company to said Employes for all pecuniary and monetary losses suffered and sustained by them by the loss and denial to them of their *wages, earnings, emoluments, privileges, rights, relief, pensions, insurance and claims aforesaid, as Employes of said defendant Railway Company, from its violation of said Contracts and Agreements of employment on March 16, 1922, to the present time, and growing out of, or incidental or appurtenant to, their status and rights, in all respects, as Employes of said defendant Company,* and that for the purposes and effectuation of such accounting, the matter thereof may be referred to an Auditor of the Court with directions fully to examine into said matters aforesaid and to report thereon to the Court within a period commensurate and appropriate in the premises.

DEFENDANT'S MOTION TO DISMISS.

The Defendant moved to dismiss the action alleging (1) the Complaint fails to state a claim upon which relief can be granted; (2) the Court has no jurisdiction of the same; (3 and 4) the claims of the Plaintiffs and the cause or causes of action are barred by limitations as provided by Article 57, Section 1 of the Annotated Code of Maryland, 1939; (5) the claims of the Plaintiffs are barred by laches; (6) the alleged Agreements were unilateral and not based upon a sufficient consideration, and were unenforceable for want of mutuality, and there is no legally sufficient averment that they were for any fixed duration and not terminable at the will of either party. (R. 30).

The District Court, upon the Defendant's said Motion, dismissed the Complaint (R. 43), and the Circuit Court of Appeals affirmed the Judgment and Decree of the District Court. (R. 59).

B.

QUESTIONS PRESENTED.

First. Whether the District Court lacked jurisdiction of the subject-matter of the case?

Second. Whether the action has been barred by laches?

Third. Whether the action is one, as the Courts below cardinally held in denying jurisdiction, to enforce a decision or decisions of the United States Railroad Labor Board, or, in radical contradistinction from such supposed or ascribed object, is the suit one to prevent the unlawful and unconscionable abrogation and nullification by the defendant Railway Company of the contractual rights and properties of its Employes, the Plaintiffs, *prescribed by and growing out of the Act of Congress of 1920, known as the "Transportation Act"*, the true construction and effect

of which said federal Act the defendant interstate carrier denied, and further claimed the right to treat said Act as nugatory and ineffective as to it.

Fourth. Does the *repeal* of the Transportation Act, out of and under which the contracts and rights of the plaintiff Employes validly arose and existed, exclude and destroy the rights derived from that Act, as a basis for Federal jurisdiction, and particularly in the face of the undoubted fact, alleged in the Bill, that the attempt of the defendant carrier to dismiss the Plaintiffs as Employes was an illegal and wrongful subterfuge by the Defendant and an evasion and violation of the mandate, provisions and purpose of the Transportation Act, regulating interstate transportation and the relations of Carriers and Employes therein?

The Appellants respectfully and earnestly submit, in connection with the *Third* and *Fourth Questions* above stated, that the fact that the Decisions of the Labor Board were not enforceable by process is widely apart from the matter of the valid and binding operation of the Transportation Act in defining and describing the relations of interstate carriers and their employes, and of contracts actually entered into by such carriers with their employes, pursuant and obediently to the provisions, policy and purposes of the Act.

C.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The basic and cardinal question in this case is whether, upon the allegations of the Bill of Complaint and the Exhibit filed as part of it, the District Court had jurisdiction, that is, whether the Bill and Exhibit disclose a controversy arising under a law of the United States (28 U. S. C. A., Sec. 41 (1)). The decision and judgment

below were to the effect that the Complaint and Exhibit did not show a controversy arising under a law of the United States, and particularly the Transportation Act passed by Congress in 1920; and judicial authorities, supposed to sustain that conclusion, were cited as having that effect. The Petitioners respectfully submit that the dominant complaint, and the unmistakable and persistent purport, of the Bill of Complaint and the facts shown and made part of it by the Exhibit, disclose and press upon the Court a distinct and definite controversy radically growing out of the federal Transportation Act of 1920, and, as specifically giving rise to such controversy, the defendant Railway's wrongful violations of the requirements and purposes of said Act, and its, the Defendant's, repudiation, as a claimed right upon its part, of said Act, and of the contracts prescribed by it and, pursuant to the Act, entered into and actually put into operation by the Company and its Employes; *all* in nullification of the Act and deprivation of the property and personal rights provided by it and said contracts to the plaintiff Employes.

The Transportation Act of 1920, Ch. 7, 45 U. S. C. A., Sec. 132, required that—

> "It *shall be the duty* of *all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof.*"

This is a Statutory Mandate that "*it shall be the duty*" of the interstate Carrier and its officers "*to exert every reasonable effort*" and "*adopt every available means*" to "*avoid*" *any*, that is to say *all*, interruption to interstate commerce "growing out of any dispute between the car-

rier and its employees". Instead of obeying and carrying out that imperative command of the Act, the defendant Railway not only did *not adopt any available means,* or *exert any reasonable effort,* to avoid dispute with its employees and interruption to its operation, but, palpably to the contrary, by subterfuge, fraud and wrong, deliberately contrived, and wilfully and persistently perpetrated, a course of conduct, whereby it arbitrarily *created* a serious dispute with its employees, in derogation and violation of the federal Statute, and *claimed* it had the *lawful right* to do so. And to maintain that course of conduct and its said claim of right, the defendant Carrier specifically attempted to *get rid* of the Act, and to *nullify* its application to itself and its employees, by the "subterfuge" of falsely placing its own employees in the status of being the employees of a number of feigned contractors (to whom the Act did not apply), and thereby withdraw and eliminate itself and its employees from the application and provisions of the Act, which in the clear, positive terms applied to them both. The Carrier's wilful purpose and conduct were *not only to violate,* but, *as to itself, to annul, the Act.*

That the Bill of Complaint and the Exhibit as part of it charge that the Defendant's conduct, complained of therein, was its repudiation and violation of the Transportation Act of 1920 under a claim of right, and expressly and repeatedly show that the Transportation Act, and its construction, operation and effect, were basically and directly involved in the suit, plainly appear in the following allegations, among others, in the Bill and Exhibit:

Paragraph 3 of the Bill (R. 3-4) alleges that the interstate railroads, including Defendant, were returned to private ownership and management *by the Transportation Act of 1920;* that *"under said Act"* the Railroad Labor Board, created thereby, in the exercise of its lawful powers, etc.,

rendered the several decisions referred to in the Bill of Complaint, and ordered the carriers and the employes to hold conferences *"according to the provisions of said Transportation Act"*, and agree on as many rules as possible, and submit such as were not agreed on to the Board, etc.; that on November 29, 1921, the Board promulgated a complete set of rules to take the place of the rules in the National Agreement and ordered them to be applied so as to form and constitute a working agreement as just and reasonable; *that the defendant Railway Company accepted this Agreement, printed it and put it into effect* (R. 4).

Paragraph 4 of the Bill alleges that under Decision No. 119, which the Board rendered ("under said Act"), and pursuant to that Decision (and the Act), the Railway Company and the Employes entered into the Contracts and Agreements known as "Negotiations of Rules and Working Conditions under Decision 119 of the United States Railroad Labor Board"—a plain allegation that the carrier and the employes, both subject to the Act of 1920, accepted said Decision 119 and the Contracts and Agreements prescribed by it, as intended and provided by the Act. Facts shown by the Exhibit are particularly to the same effect. *Infra.*

After setting forth, in Paragraph 6, the Defendant's arbitrary and illegal discharge of its Employes, in violation of the rules agreed upon under the Act, the Bill of Complaint, Paragraph 7, describing the manner and particulars of such discharge of the Employes, makes the highly important and pertinent allegation that "THE SAID RAILROAD COMPANY IN VIOLATION OF SAID TRANSPORTATION ACT OF 1920, and of the Wage and Rule Decisions of the Labor Board, undertook to remove FROM THE JURISDICTION OF THE BOARD ITS SAID EMPLOYES AFORESAID, WHO, UNDER

CONTRACTS WITH SAID COMPANY, WERE PERFORMING WORK AND SERVICE FOR IT, BY LETTING OUT TO ALLEGED 'CONTRACTORS' THE OPERATION OF ITS RAILWAY SHOPS." The Bill of Complaint then alleges that a Committee of the Employes sent to each of the four alleged Contractors demands to put into effect the rates of pay, rules and working conditions which the Railroad Company had agreed to with them, and, moreover, that the President of the Railway Employes' Department notified the Labor Board that a strike would be called on March 25, which was called on that date, "UPON THE GROUND, DEFINITELY AVOWED AT THE TIME, THAT SAID FOUR CONTRACTS WERE ENTERED INTO BY SAID RAILWAY COMPANY WITH SAID ALLEGED CONTRACTORS TO EVADE COMPLIANCE WITH THE PROVISIONS OF THE TRANSPORTATION ACT OF 1920 AND THE RULES AND WAGE DECISIONS OF SAID LABOR BOARD". (R. 9).

The dispute, growing out of and based upon the charge and complaint that the Railway's four Contracts with said alleged Contractors were entered into by it *to evade the provisions of the Transportation Act of 1920,* was then submitted to the Board, which, unquestionably, was done under and in accordance with the Transportation Act of 1920.

The Bill notably at this point (R. 10) alleges that the Board stated with particularity the positions and contentions of the Carrier, particularly asking the attention of the Court thereto, and proceeds to allege that the Board *thereupon explicitly defined the question which constituted the issue* between the Carrier and the Employes, thus: "The Carrier contends it can close its shops, put its Employes under a contractor, arbitrarily reduce their legally established wages, and deprive them of the Railway Shop

Rules, embraced in an Agreement of the parties and in the Decisions of the Board, although said wages and rules had previously been put into effect by the Carrier, and the thirty-day notice provided by the Agreement AND THE TRANSPORTATION ACT for negotiating changes in wages and working conditions had not been complied with".

The Board then continued, as the Bill particularly alleges, that "These Contracts are merely subterfuges by which the Carrier arbitrarily changed the wages and working conditions of these Employes without compliance with THE PROVISIONS OF THE LAW" (i. e. The Transportation Act).

And the Bill further states that the Board further said, "It must be remembered that these Decisions (of the Board embodying the wages and rules taken away by the Carrier from these Employes) had been accepted and put into effect by the Carrier, and had thus, in effect, become Agreements between the parties, which could not be terminated except in accordance with the express provisions of the Agreements themselves AS WELL AS THE TRANSPORTATION ACT, 1920." (R. 10).

The Bill then recites that the Board concluded (a) that the Contracts between the Railway Company and the four alleged Contractors were IN VIOLATION OF THE TRANSPORTATION ACT OF 1920, etc., and (b) that said Employes were under the jurisdiction of the Board AND SUBJECT TO THE TRANSPORTATION ACT OF 1920. (R. 10-11).

Plainly, all the said allegations of illegal and unconscionable conduct charged by the Bill against the defendant Railway Company relate and refer to the *Transportation Act of 1920.*

THE EXHIBIT FILED AS PART OF THE BILL.

The matters and facts appearing in the *Exhibit*, as part of the Bill, are equally express and cumulative as showing that the whole essential dispute herein between the Plaintiff Employes and the Defendant Carrier originated and consists in a claim, asserted and maintained, as of right, upon the part of the Railway Company, and a counter claim upon the part of the Employes, directly involving the application, meaning and effect of the Transportation Act of 1920. The Board defined the identical controversy, submitted to it, with precise exactitude, as follows:

> "Question: Are the Contracts which the Western Maryland Railway Company has let for the operation of its railway shops IN VIOLATION OF THE TRANSPORTATION ACT, 1920, and of the Wage and Rule Decisions of the Labor Board, and do said Contracts REMOVE FROM THE JURISDICTION OF THE BOARD THE EMPLOYES who, under said Contracts, are performing service for the carrier?" (R. 16-17).

Next, the Exhibit shows that the chief Executive of the Railway Company wired the Labor Board, March 26, 1922, "Your wire 24th: Western Maryland Railway Company HAS NOT VIOLATED TRANSPORTATION ACT, or orders of Labor Board." (R. 18).

In taking jurisdiction of the controversy, the Board declared "THE BOARD, THEREFORE, UNDER THE AUTHORITY CONFERRED UPON IT BY THE TRANSPORTATION ACT, ASSUMES JURISDICTION OF SAID DISPUTES AND SETS THEM FOR HEARING MONDAY, JUNE 26, 1922". (R. 18).

The Exhibit then shows that the President of the Railway Employes Department (Federated Shop Crafts), by letter, dated March 23, 1922, notified the Labor Board that the strike had been called because "Said Contracts were

entered into to evade compliance with the provisions of the TRANSPORTATION ACT, 1920, and the rules and wage Decisions of the Labor Board". (R. 21).

The Exhibit then (R. 23-24) shows that the Labor Board, in its Opinion upon the controversy, declared

> "The Labor Board has already decided the first question thus raised by the carrier by holding in numerous cases that the employees in a railway shop operated under such a contract are, *within the contemplation of the TRANSPORTATION ACT, 1920,* employees of the carrier and subject to the jurisdiction of the board.
>
> "The carrier contends that it can close down its shops, put its employees under a contractor, arbitrarily reduce their *legally established wages, and deprive them of the railway shop rules embraced in an agreement of the parties and in the decisions of the Board, although* SAID WAGES AND RULES HAD PREVIOUSLY BEEN PUT INTO EFFECT BY THE CARRIER, AND THE 30-day NOTICE PROVIDED BY THE AGREEMENT AND THE REQUIREMENTS PROVIDED BY CONGRESS IN THE TRANSPORTATION ACT FOR NEGOTIATING SUCH CHANGES IN WAGES AND WORKING CONDITIONS HAD NOT BEEN COMPLIED WITH."
>
> "These contracts were merely subterfuges by which the carrier arbitrarily changed the wages and working conditions of these employees *without compliance* WITH THE PROVISIONS OF THE LAW. If it be said that the decisions of the board, embodying the wages and rules taken away from these employees, were not legally binding on the carrier, IT MUST BE REMEMBERED THAT THESE DECISIONS HAD BEEN ACCEPTED AND PUT INTO EFFECT BY THE CARRIER AND HAD THUS, IN EFFECT, BECOME AGREEMENTS BETWEEN THE PARTIES, WHICH COULD NOT BE TERMINATED EXCEPT IN ACCORDANCE WITH THE EXPRESS PROVI-

SIONS OF THE AGREEMENTS THEMSELVES *AS WELL AS THE TRANSPORTATION ACT, 1920.* * * *

"In this case, however, the carrier had taken steps which purported to close its shops, transfer its employees to a new employer, remove them from the application OF THE TRANSPORTATION ACT, 1920, and obliterate their wage and rule agreements. This was equivalent to a lockout. THIS WAS DONE UNDER A CLAIM OF LEGAL RIGHT." (R. 24-25).

In its Decision, the Labor Board declared (R. 25):

"(a) That the several contracts entered into between the Western Maryland Railway Co., George E. Fowble, Charles J. Wolfe, William K. Hossack, and the Dickson Construction & Repair Co., for the operation of its railroad shops and the performance of certain work enumerated in said contracts, ARE IN VIOLATION OF THE TRANSPORTATION ACT, 1920, IN SO FAR AS THEY PURPORT OR ARE CONSTRUED BY THE CARRIER TO REMOVE SAID EMPLOYEES FROM THE APPLICATION OF SAID ACT, AND THAT THOSE PROVISIONS OF THE CONTRACTS AFFECTING THE WAGES AND WORKING RULES OF SAID EMPLOYEES ARE IN VIOLATION OF DECISIONS Nos. 2, 119, and 147 OF THE RAILROAD LABOR BOARD.

"(b) THAT THE SHOP EMPLOYEES OF SAID CONTRACTOR ARE UNDER THE JURISDICTION OF THE LABOR BOARD AND SUBJECT TO THE APPLICATION OF THE TRANSPORTATION ACT, 1920, and decisions of the Labor Board."

In the light of the above numerous and definite allegations of the Bill of Complaint and the facts set forth in the Exhibit, it would seem impossible to justify the fundamental conclusion of the Court below, in its denial of jurisdiction, that the Bill of Complaint and Exhibit do not disclose a controversy arising under a law of the United States, or to discover any application of the authorities

and decisions cited in the Opinion of the Court below to establish the absence of jurisdiction in view of said allegations of the Bill and Exhibit, which *demonstrate*, beyond question, an avowed and glaring controversy arising under the Transportation Act of 1920.

Upon such allegations, the decisions of this honorable Court clearly and abundantly sustain the jurisdiction of the Court in this case; and the decision of the Court below, upon the question of jurisdiction, is in conflict with and contravention of those decisions.

Thus—

In *Louisville & Nashville R. R. Co. v. Rice*, 247 U. S. 201, the Supreme Court said:

> " 'Cases arising under the laws of the United States are such as grow out of the legislation of Congress'. *Tennessee v. Davis*, 100 U. S. 257, 264. 'Whether a party claims a right under the Constitution or laws of the United States is to be ascertained by the legal construction of its own allegations.' *Central R. R. Co. of New Jersey v. Mills*, 113 U. S. 249, 257. 'If the plaintiff really makes a substantial claim under an act of Congress there is jurisdiction, whether the claim ultimately be held good or bad.' *The Fair v. Kobler Die Co.*, 228 U. S. 22, 25. A suit arises under an act of Congress when 'it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends.' *Shultis v. McDougal*, 225 U. S. 561, 569. As to interstate shipments 'there can be no question that, since the decision in the *Croninger Case* (226 U. S. 491), the parties are held to the responsibilities imposed by the federal law, to the exclusion of all other rules of obligations.' *St. Louis, Iron Mountain & Southern Ry. Co. v. Starbird*, 243 U. S. 592, 595; *Louisville & Nashville R. R. Co. v. Maxwell*, 237 U. S. 94, 97."

A court of the United States has original jurisdiction over all cases where a United States law, whether constitutional or congressional, is involved. *Leonard v. City of Shreveport* (C. C. La., 1886) 28 F. 257.

A suit is within the jurisdiction of the District Court as a controversy arising under the laws of the United States, where the right and title set up by the plaintiff depend upon the construction of an act of Congress. *King County v. Seattle School Dist.*, 263 U. S. 361, 68 L. Ed. 339.

Where some title, right, privilege, or immunity on which a recovery depends will be defeated by one construction or sustained by opposite construction of Congressional legislation, the case arises under the laws of the United States within this section. *Starin v. New York*, 115 U. S. 248, 29 L. Ed. 388.

To the same effect are:

Cooke v. Avery, 147 U. S. 375, 37 L. Ed. 209.
Northern Pac. R. Co. v. Soderberg, 188 U. S. 526, 47 L. Ed. 575.
In re Lennon, 166 U. S. 548, 41 L. Ed. 1110.

An action to enforce a right, the existence of which *depends* upon an Act of Congress, *necessarily involves the construction and application of the federal statute*, and is within the jurisdiction of the federal courts. *Calhoun v Central of Georgia R. Co.* (1910), 7 Ga. App. 528, 67 S. E. 274.

See also:

First National Bank v. Williams, 252 U. S. 504, 64 L. Ed. 690.
Locking v. Detroit, etc., Navig. Co., 273 Fed. 577; 284 Fed. 497; 261 U. S. 618, 67 L. Ed. 830; 265 U. S. 346, 68 L. Ed. 1047.
U. S. v. McNeil & Sons, 267 U. S. 302; 307.

Smith v. Kansas City Title & Tr. Co., 255 U. S. 180, 65 L. Ed. 577.
Hart v. Keith Exchange, 262 U. S. 271, 273.
Mayo v. Lakeland, etc., Co., 309 U. S. 310, 318; 84 L. Ed. 774, 780.
Gibbs v. Buck, 307 U. S. 66; 83 L. Ed. 1111.
Utah Fuel Co. v. National, etc., Coal Comm., 306 U. S. 56, 60; 83 L. Ed. 483, 487.
Shields v. Utah, etc., R. Co., 305 U. S. 177, 183; 83 L. Ed. 111, 116.
Cound v. Atchison, T. & S. F. Ry. Co., 173 F. 527.
25 Corpus Juris, Federal Courts, Sec. 32, pp. 726-727; also Sec. 37, p. 729, note 35, pp. 729-730.
Rose, Federal Jurisdiction and Procedure (3rd ed.) Secs. 234, 249.

Accordingly, it is respectfully submitted, the Writ of Certiorari is preeminently called for in this case because the decision of the Court below upon the allegations of the Bill and Exhibit are not only not in accord, but *in conflict*, with the applicable decisions of this Court; and because the Court below decided an important question of general law in a way untenable and in conflict with the weight of authority; and, particularly, decided a *federal question of cardinal importance* in a way in conflict with applicable decisions of this Court.

The learned Court below apparently fell into the error of holding that the *repeal* of the Transportation Act of 1920 precluded and prevented any controversy from arising under that law involving rights and interests created by the Act prior to its repeal. For illustration, in the Opinion it is stated with reference to the Transportation Act of 1920 creating the Railroad Labor Board, "This Board, as created by the Act of 1920, was legislated out of existence by the Railway Labor Act of May 20, 1926. New legislation has since been enacted controlling the subject, etc." (R. 52).

This position is untenable. The authorities are unanimous, and exceedingly numerous, that the repeal of the federal Act of 1920 did not destroy or divest the personal and property rights of the plaintiff Employes validly created and existing by virtue of and in accordance with the provisions of the repealed statute. Such valid and vested rights could not be constitutionally or legally destroyed by such repeal, but could be terminated only in accordance with the provisions of the special contracts whereby they were legally created by virtue of and pursuant to the said Act of Congress. So that the personal and property rights of the Employes herein involved are as fully and directly referable now to federal Act of 1920 and the Contracts which created them under the authority and provisions of that Act, as they were when they originally came into existence under and by virtue of the Act. *See the list of authorities cited in the Brief, Argument, Point II, to the effect that the repeal of a statute does not and cannot destroy rights created and existing under and pursuant to such statute.*

2. The effect of the opinion and judgment of the Circuit Court of Appeals is to maintain the legality of, and immunity from responsibility for, the *abrogation* by the defendant Company of a Federal Statute and of Contracts prescribed by, and entered into under, said Statute for the protection of the public interests involved in interstate commerce. The judgment of the Court below, in that aspect, it is respectfully submitted, calls for a review thereof by this Court by Writ of Certiorari.

3. The Circuit Court of Appeals for the Fourth Circuit held that the suit, embodied in the Bill of Complaint and Exhibit, "was *truly one in equity* seeking, among other things, an injunction, an accounting, and a determination of appellants' status or relationship, with a complexus of

all the rights and privileges thereunto appertaining—such as wages, seniority, relief and pension". Nevertheless, the learned Court below, despite the positive allegations, repeatedly appearing throughout the Bill of Complaint and Exhibit, of unconscionable wrong-doing and misconduct, in violation of both law and morals, upon the part of the Defendant and Appellee, and out of which the grievances and injuries of the Plaintiffs and Appellants originated and continued, applied the *equitable* defense of *laches* to defeat the claim and right of the Employes to the equitable remedies and redress they prayed.

The equitable defense of laches is not available in a court of conscience to a wrong-doer wilfully and persistently guilty of the inequitable, blameworthy and unrighteous conduct which the allegations of the Bill and Exhibit, admitted upon Motion to Dismiss, definitely charge the Defendant with having deliberately committed. As shown in the Brief in support of this Petition, the decisions of this Court, of the high English Courts, and of Courts of last resort in the several States, as well as the authoritative treatises upon equity jurisprudence, sustain the sound equitable doctrine, above stated, that, in suits in equity, the defense of laches is not available in furtherance of wrongdoing and injustice, or to shield and uphold the wrongdoer who has perpetrated the injuries complained of.

It is respectfully submitted that the judgment of the learned Court below that the complaint and suit were barred by laches and, therefore, should be dismissed, is in disregard of and conflict with the applicable decisions of this Court, and of the general weight of authority upon the subject, and appropriately calls for the Writ of Certiorari for the review of said judgment by this honorable Court. See the Authorities in the Brief, Point IV, *infra*.

WHEREFORE, your Petitioners respectfully pray that the Writ of Certiorari be issued out of and under the seal of this honorable Court, directed to the Circuit Court of Appeals for the Fourth Circuit, commanding that Court to certify and to send to this Court, for its review and determination, on a certain day to be named therein, a full and complete Transcript of the Record and of all proceedings in case numbered on its Docket No. 4918, and entitled as above shown, and that said judgment of said Circuit Court of Appeals for the Fourth Circuit in and respecting said case may be reversed by this honorable Court, and that your Petitioners may have such other and further relief in the premises as to this Court may seem just and proper.

And your Petitioners will ever pray, etc.

ISAAC LOBE STRAUS,

Counsel for Petitioners.

Dated September 8, 1942.